

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

SIDNEY E. SMITH III, et al., executors	)	
of the Estate of Sidney E. Smith, Jr.,	)	
	)	
Plaintiff,	)	Civil Action No. 02-264 Erie
	)	
v.	)	Hon. Sean J. McLaughlin
	)	Hon. Susan Paradise Baxter
UNITED STATES,	)	
	)	
Defendant.	)	

**MOTION TO ALTER OR AMEND JUDGMENT**

The United States of America requests that this Court, pursuant to Fed. R. Civ. P. 59(e), alter or amend the judgment to reflect the maximum amount that the taxpayer claimed in his claim for refund. In particular, the United States submits that the Court lacks jurisdiction to award an amount in excess of the overpayment claimed at the administrative level, together with interest accruing to the date of judgment.

These grounds are more fully set forth in a memorandum in support of this motion, filed herewith. In addition, the United States relies upon (1) pertinent excerpts from the taxpayer's Form 843, Claim for Refund and Request for Abatement, a true and correct copy of which is attached as Exhibit 1 to the United States' motion *in limine* (Docket No. 77), filed September 8, 2005, (2) the taxpayer's official transcript of account (Tr. Ex. 35), a true and correct copy of which is attached hereto, and (3) the entire record in this action.

A proposed form of order is submitted herewith.

WHEREFORE, the United States moves the Court for an order that the Clerk amend the judgment to reflect an award of \$439,865.19, together with interest accruing from October 14, 2005 according to law. This motion is made without prejudice to the right of the United States to appeal from the judgment for any reason.

Dated: October 14, 2005

Respectfully submitted,

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